

Application No.: 10/081,739

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Docket No.: 564462006000 / D1530-6US

REMARKS**Status of the Claims***Pending claims*

Claims 1 to 122 are pending.

Claims canceled and added in the Instant Response

Claims 3, 4, 7 to 10, 17 to 28, 30 to 46, 93, 94, 108 to 110 and 116 are canceled, without prejudice, and new claims 123 and 124 are added.

Support for the Claim Amendments

The specification sets forth an extensive description of the invention in the new and amended claims. For example, support for claims directed to probes of varying lengths comprising sequences of the invention can be found, inter alia, on page 45, paragraphs 0156 and 0157; and page 47, paragraph 0163. For example, support for claims directed to nucleic acids comprising RNA or DNA can be found, inter alia, on page 43, paragraph 0151. For example, support for claims directed to various nucleic acid hybridization conditions can be found, inter alia, on page 48, paragraph 0165.

The Restriction Requirement

The Patent Office alleged that the pending claims of the application are directed to nineteen (XIX) separate and distinct inventions under 35 U.S.C. §121.

The Election

In response to the Restriction Requirement, Applicants elect Group I, claims 1 to 29, 47, 48, 74 to 92 and 101 to 106, drawn to polynucleotides, vectors, host cells comprising same, probes

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for same and a method of making a polypeptide using the polynucleotides of the invention, class 435, subclass 69.1, with traverse.

Applicants thank the Examiner for noting that after the elected product claims have been found to be allowable, all withdrawn process (methods) claims which depend from or otherwise include all of the limitations of the allowed product claims should be rejoined. MPEP §821.04; pg 800-63, 8th Edition, August 2001; In re Ochiai, 37 USPQ2d 1127 (Fed. Cir. 1995); In re Brouwer, 37 USPQ2d 1663 (Fed. Cir. 1995); 1184 OG 86, 3/26/96.

Applicants respectfully note that after the elected product claims have been found to be allowable, the withdrawn process (methods) claims of Groups IV, VII, VIII, IX, XI, XIII, XIV, XV, XVI, XVIII and XIX should be rejoined.

Reasons to reconsider and withdraw restriction requirement

Applicants respectfully request the Patent Office to reconsider and to withdraw the restriction requirement for the following reasons.

Applicants respectfully request rejoining of Group V and VI to the elected Group I. Applicants respectfully aver that after a complete search directed to the novel nucleic acids of the invention it would not be an undue burden for the Patent Office to also do a complete search regarding the claimed computer mediums and computer systems comprising novel sequences of the invention. Accordingly, Applicants respectfully request rejoining of Groups I, V and VI.

Also, as noted above, because all withdrawn process (methods) claims which depend from or otherwise include all of the limitations of the allowed product claims should be rejoined, Applicants respectfully note that after the elected product claims have been found to be allowable, the withdrawn process (methods) claims of Groups IV, VII, VIII, IX, XI, XIII, XIV, XV, XVI, XVIII and XIX should be rejoined.

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CONCLUSION

Applicants respectfully submit that all claims pending in this application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

Applicants believe that no fees are necessitated by the present response and amendment. However, in the event any such fees are due, the Commissioner is hereby authorized to charge any such fees to Deposit Account No. 03-1952 referencing attorney docket no. 564462006000. Please credit any overpayment to this account.

If the Examiner believes a telephonic conference would expedite prosecution of this application, please telephone the undersigned at (858) 720-5133.

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Respectfully submitted,

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